

MASSACHUSETTS SUPERIOR COURT BUSINESS LITIGATION SESSION: FREQUENTLY ASKED QUESTIONS

What is the Business Litigation Session (BLS)?

The BLS is actually two sessions (BLS1 and BLS2) of the Superior Court for Suffolk County. Instituted in 1999, the BLS provides a forum for business and commercial disputes which, because of their complexity, will benefit from individualized and collaborative case management. Examples of the types of cases litigated in the BLS are: shareholder derivative claims, disputes concerning intellectual property and trade secrets, suits to enforce restrictive covenants in employment agreements, business torts, claims arising from the sale of assets or corporate mergers, shareholder and consumer class actions, insurance coverage disputes, and other categories enumerated in [Superior Court Administrative Directive No. 09-1](#). The mission of the BLS is to resolve those disputes in a timely and efficient manner and to issue reasoned opinions that will foster the development of a consistent body of law on recurring issues of importance.

A more detailed Mission Statement of the BLS may be found [here](#).

When and how is a case assigned to the BLS?

A plaintiff wishing to file in the BLS should file the Complaint in the Suffolk Superior Court, using the [BLS Civil Action Cover Sheet](#). The Administrative Justice of the BLS will issue a notice of acceptance or denial and, if the case is accepted, will assign it to BLS1 or BLS2. Cases not accepted into the BLS will be assigned to a Suffolk County time standards session.

Cases may also be transferred to the BLS from a time standards session on motion by any party or by the judge, sua sponte. If the case is filed outside of Suffolk County, the parties must waive any objection to venue in Suffolk County in order for the transfer to occur. The procedure for instituting a transfer is specified in [Superior Court Administrative Directive No. 09-1](#).

What about venue?

Because both BLS sessions are located in Boston, there must be venue in Suffolk County, or a waiver of venue. See [Superior Court Administrative Directive No. 09-1](#) for details.

Does the BLS try jury cases?

Yes, according to the same rules and procedures as other Superior Court sessions.

What sort of case management does a BLS case receive?

Soon after the pleadings are closed, every BLS case is called in for a Rule 16 conference. As the [conference notice](#) makes clear, counsel are expected to confer and to come to the conference with agreed or separately proposed schedules for major case milestones (discovery completed, Rule 56 motions filed, final pretrial conference, etc.), and should be prepared to discuss all other matters likely to arise (notably, where applicable, e-discovery related matters enumerated in [Mass. R. Civ. P. 26\(f\)](#)). Counsel will also be asked whether there is agreement to participate in the [BLS Discovery Project](#).

Additional case management conferences will be held on request of a party or the Court. Issues (discovery or otherwise) needing prompt resolution may be brought before the Court formally (by motion) or informally (by telephone call to the session clerk, following discussion among counsel, to schedule a hearing).

What is the BLS Discovery Project?

The BLS Discovery Project aims to reduce the costs of discovery through planning, automatic disclosures, and proportionality. Participation is by voluntary agreement of all parties. See the [Introduction to BLS Discovery Project](#) for details.

What else should I know about discovery in the BLS?

BLS cases tend to be document-intensive. Counsel practicing in the BLS should familiarize themselves with the following:

- [Mass. R. Civ. P. 26 - 37](#), and particularly the recent revisions to [Rule 26](#), especially subsections (b)(5) regarding privilege logs and (f) regarding electronic discovery.
- Superior Court Standing Order 1-09, “Written Discovery,” available [here](#).
- Formal Guidance of the Business Litigation Sessions Regarding Confidentiality Agreements dated January 2, 2008, available [here](#).

Does the BLS have any specific rules regarding impoundment?

The BLS follows the Trial Court’s Uniform Rules of Impoundment Procedure, which may be found [here](#).

Does the BLS have a “culture” and/or any special rules regarding dispositive motions?

Given the nature of the BLS caseload, dispositive motions – successful and otherwise – under Rules 12(b), 12(c), and 56 are a fact of life. Counsel are encouraged to examine carefully and realistically the prospects for success before serving and filing such motions, since they can be quite costly to litigants and time-consuming for the court.

In particular, counsel should be aware of the [BLS Procedural Order Regarding Partial Dispositive Motions dated June 1, 2015](#) requiring leave of court for partially dispositive motions. **Effective July 1, 2015**, a party filing such a motion must include in the package of materials to be filed with the court a “**Certificate of Compliance**” expressly stating that this procedural order has been followed.

With respect to motions filed under Rule 56, counsel are advised to take special care to comply with the requirements of [Superior Court Rule 9A\(b\)\(5\)](#) regarding the statement of facts and the record. Non-complying papers are apt to be returned. For a particularly good discussion of this rule and its importance to judges, see [this article](#).

In any motion (summary judgment, preliminary injunction, etc.) with a particularly voluminous record, counsel are encouraged to supply electronic copies in PDF and Word format, with hyperlinked references in the briefs, proposed findings of fact, etc.

Where the briefs cite extensively to federal or other non-Massachusetts case law, statutes, or regulations, counsel are encouraged to supply copies (paper or electronic) with the motion papers.

For any BLS motion (dispositive or otherwise), a reply memorandum – but not a sur-reply – not exceeding ten pages is allowed without leave of court; see the BLS Procedural Order available [here](#).

Finally, the BLS has a “Formal Guidance” document regarding Motions for Reconsideration, available [here](#).

Is there somewhere that BLS standing orders, etc. may be found?

Yes – on [this website](#)! Other Superior Court Rules, Standing Orders, and Administrative Directives – many of which apply to BLS cases – may be found [here](#) and in the West rulebooks.

Where may reported decisions of BLS judges be found?

Each month, BLS judges submit their written decisions for electronic access. Some are designated for publication and are available on [Westlaw](#), [LexisNexis](#), [Fastcase](#), the [Massachusetts Law Reporter](#), [Massachusetts Lawyers Weekly](#), and (while fresh) the [Social Law Library](#). Others are designated “Social Law Only,” and are available to subscribers on [Social Law’s Substantive Law Database](#).

Who are the judges that are currently assigned to the BLS?

Presently, BLS1 is staffed by Judges Kaplan (January-June) and Leibensperger (July-December). Judges Salinger (January-June) and Sanders (July-December) sit in BLS2. Judge Sanders serves as the BLS Administrative Justice.

Judges, at their discretion, may retain jurisdiction over a BLS case when assigned to a non-BLS session.

Who are the judges that previously sat in the BLS?

Current Superior Court Justices Thomas P. Billings, E. Susan Garsh, Peter M. Lauriat, Christine M. Roach, and Chief Justice Judith Fabricant; Retired Superior Court Justices Margaret R. Hinkle, Stephen E. Neel, and Allan van Gestel; and Associate Justice of the Supreme Judicial Court Margot Botsford and Chief Justice of the Supreme Judicial Court Ralph D. Gants. Former Chief Justices of the Superior Court Suzanne V. DelVecchio and Barbara J. Rouse were instrumental in creating and overseeing the BLS.

How do I contact a BLS session clerk?

In BLS1, Helen Foley, Assistant Clerk, 617-788-8181 ([Courtroom 1309](#))

In BLS2, Richard Muscato, Jr., Assistant Clerk, 617-788-8152 ([Courtroom 1017](#))

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